

CONCORD's Analysis of the Post-Cotonou Agreement

How are CONCORD's previous positions reflected in the final text of the Post-Cotonou Agreement? Here we examine the text of the [Negotiated Agreement](#) initialled by the chief negotiators of the European Union (EU) and the Organisation of African, Caribbean and Pacific States (OACPS) on 15 April 2021.

The analysis below follows the structure of the new Agreement, indicating, for each part of it:

- What we like
- What we don't like
- What is different compared with previous Agreements, what is an added value
- What needs to be prioritised

We also give CONCORD's views on key thematic areas and protocols, included here at the end of the analysis.

Part I: General Provisions

What we like

- The Agreement's Foundation promotes a multi-stakeholder approach and acknowledges civil society's important role and contribution (Articles 2 (8) and 5 (3)). The parties commit to promoting and strengthening civil society participation in policy processes through information sharing, consultation, involvement in dialogue and implementation, and capacity building.
- Gender equality is an objective of the Agreement and is included in the principles of the Foundation (General Provisions). It is also considered a cross-cutting theme, and the parties commit to promoting gender mainstreaming. Specific areas of action for gender equality are further elaborated in articles under the human rights and human development titles of the Foundation, and are also reflected in the regional protocols (Foundation Articles 1, 7, 10 and 36, and Africa Protocol Articles 40 and 66).
- While the Foundation (General Provisions) does not mention the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) or other international commitments apart from Agenda 2030 and the Paris Agreement, in the Africa Protocol the parties do commit to the full implementation of CEDAW's recommendations. We welcome the specific mention of female genital mutilation and child, early and forced marriage in both the Foundation and the Africa Protocol.

Article 1 – Objectives

What we like

- We appreciate the mention of gender equality, creating decent jobs for all, the eradication of poverty, tackling inequality, leaving no one behind (paying special attention to women and girls, in all their diversity), the sustainable, integrated management of natural resources, and the aim of facilitating regular migration.

What we don't like

- On migration, the language reflects almost exclusively the EU mandate, focusing as it does on stemming irregular migration, with no emphasis on migrants' rights or development objectives.
- We regret the traditional approach to gender mainstreaming, as we believe the Agreement would have benefited from a more transformative approach to gender equality. A gender-transformative approach would have committed, for example, to creating the conditions needed to enable the full realisation of women's and girls' rights.

Article 2 – Principles

What we like

- The principle whereby the parties commit to promoting a multi-stakeholder approach that entails actively engaging civil society in the partnership dialogue and cooperation processes, along with other actors.
- The inclusion of a gender perspective and the importance attached to mainstreaming gender equality. As this is stated in the section on principles, it means that a gender perspective must be a principle guiding the interpretation of all the other provisions, and their subsequent implementation.

Article 3 – Partnership dialogue

What we like

- The fact that civil society organisations must be duly informed, consulted and enabled to feed into the dialogue, and that this should be done in a timely manner (remark made in Article 95 (2), Engagement with stakeholders).

What we don't like

- We regret that the words "as appropriate" were added in Article 3 (4) – this risks leading to a narrow interpretation of where it might be appropriate to involve partners.
- What is missing is a commitment to conducting an ongoing structured dialogue with the stakeholders, including civil society. On their own, the provisions (Article 3 (8) and Article 4 (4)) do not guarantee that civil society organisations (CSOs) will really be able to feed into the dialogue regularly in an appropriate, meaningful way.

Article 4 – Policy coherence

What we like

- Article 4 on policy coherence is extremely important and should be one of the core principles guiding the implementation of the new Agreement: significant progress can be made on reducing poverty and inequality and achieving the sustainable development goals (SDGs) if the negative impacts of EU policies are minimised.

What we don't like

- While we welcome the fact that the new Agreement reiterates that parties must prevent or minimise the negative impacts that their policies may have on the other parties, we regret that this guiding principle is not mainstreamed across the new Agreement's strategic priorities. Apart from the reference to this principle in the Preamble and in Article 4, the Agreement makes no reference to policy coherence for development, and there are no priorities or actions aimed specifically at addressing the negative impacts EU policies are currently having in African, Caribbean and Pacific (ACP) countries (for example, in the areas of migration and trade).

Article 5 – Actors

What we like

- The fact that non-state stakeholders are recognised as actors in the partnership; that the parties agree to strengthen the effective participation of these stakeholders, ensuring that they are all informed and consulted, where appropriate, on strategies and sectoral policies and that they provide inputs into the broad process of dialogue, receive capacity-building support in critical areas, and participate in the implementation of cooperation programmes. This broadly corresponds to the scope of civil society participation set out in Article 4 of the Post-Cotonou Agreement.

What we don't like

- We regret that these commitments again come with the “where appropriate” limitation, which could mean that civil society participation will have to be justified on a case-by-case basis. Moreover the participation of civil society in development cooperation programmes is confined to areas that concern them (areas that may be restricted if space is shrinking), and is based on the extent to which they address the needs of the population, their particular areas of competence, and whether or not they have accountable, transparent governance structures.
- These conditions are not drastic or problematic in themselves, but they are open to interpretation and in certain restrictive political contexts they could easily become a hindrance to civil society action and financing. How will the EU react if civil society organisations are prevented from accessing funding under the Neighbourhood, Development and International Cooperation Instrument (NDICI) on these grounds?
- Another aspect of concern to us is how inclusive the consultation with civil society will be – that is, which actors the parties will be willing to consult with. In this regard, it would have been important for the Agreement to specify that civil society should be represented by actors both of different types (civil society organisations, community-based organisations, faith actors, etc.) and at different levels (local, national, regional), and that special efforts should be made to facilitate active participation by local actors.

Article 6 – Structure

- Here it is important to note that the provisions set out in the General Provisions **and its Annexes** are to be legally binding on all the parties to this Agreement. This means for example that the detailed provisions on return and readmission contained in an Annex are as binding as the general provisions on migration.

Article 7 – Cross-cutting themes

What we like

- Resilience at the level of countries, communities and individuals is mentioned as a cross-cutting theme – this may be good, depending on how far it is reflected in the different strategic priorities, and provided it does not equate to undue interference in the sovereignty of states.

What we don't like

- This article looks like an afterthought. It indicates agreement to taking a systematic approach to issues such as gender equality and human rights, but there is no explicit mention of allocating resources – financial or human – to action on these issues.
- Although gender equality is mentioned, broader work against inequality is not. We would like to see work against inequality mainstreamed in the Agreement.

Part II: Strategic Priorities

Title I: Human Rights, Democracy and Governance in People-centred and Rights-based Societies

Article 8

What we like

- The Foundation of the Agreement reaffirms the determination to “[p]rotect, promote and fulfil human rights, fundamental freedoms and democratic principles, to strengthen the rule of law and good governance”, recognising respect for human rights as an integral part of sustainable development.

Article 9 – Human rights, democracy and the rule of law

What we like

- The reference to the right to development as being at the core of a rights-based approach to development, and the explicit support for measures to uphold the right to development and to ensure, inter alia, equal opportunities for all both to access and to benefit from basic resources and essentials such as education, health services, food, housing, employment and a fair distribution of income.
- In addition to “sex, ethnic or social origin, religion or belief, political or any other opinion, disability, age”, the Agreement also commits to addressing discrimination on the grounds of “other status”, thereby giving leverage to tackle discrimination also on the grounds of sexual orientation or gender identity, even though they are not mentioned specifically.

What we don't like

- Although the Foundation commits to the promotion of universal human rights, with no discrimination on any grounds, it falls short of referring specifically to work done to abolish discrimination on the basis of sexual orientation or gender identity. The new EU-OACPS Agreement could have been an opportunity to step up the promotion of the rights of those most marginalised by specifically including LGBTIQ people.
- Article 9 (6) enables everyone to contribute to the promotion of human rights, including economic, social and cultural rights, but it is unclear how that would be done in practice. We believe concrete mechanisms for the enjoyment of economic, social and cultural rights need to be put in place, as a way of ensuring that states fulfil their duty to uphold international human rights law.
- While we welcome the parties' undertaking to engage in bilateral dialogue on the death penalty, the Agreement does not include a commitment to end this penalty.

Article 10 – Gender equality

What we like

- We welcome the recognition of gender equality as a key driver of sustainable development, and the parties' commitment to it in Article 10 of the Agreement. We are glad to find a reference to the need to tackle gender bias and to ensure equal opportunities, full and equal participation in public life and the enjoyment of human rights for all.

What we don't like

- Article 10 on gender equality states that the parties will seek to improve women's access to all the resources needed throughout life to reach their full potential. This, however, applies

to girls only “where appropriate”. Discriminatory policies and practices that restrict equal access to resources affect women and girls regardless of their age, and have an impact on girls’ transition to adulthood. It is imperative to adopt a life-course approach, so that girls have the tools and resources they need in order to develop to their full potential and to be independent when they reach adulthood. The present wording contradicts the Agreement’s objective on gender equality and its efforts to promote youth empowerment.

- Moreover, Article 10 leaves room for a binary interpretation of the term “gender”, which in itself might lead to the exclusion and further marginalisation of non-binary individuals.
- We regret that the section on gender equality makes no mention of transparency or accountability in the allocation of public funding. As mentioned above, it would be useful to know what mechanisms will be put in place to ensure substantive civil society participation in promoting gender equality.

Article 11 – Inclusive and pluralistic societies

What we like

- The parties commit to protecting and ensuring freedom of expression, opinion and assembly and to enabling civic space (under Article 9 (1) and Article 11). The Foundation also specifically identifies women and youth as key stakeholders who need encouragement to engage in political processes and decision making. This declaration represents real progress, and should be used as a tool to advance the work on creating participation spaces and mechanisms at every level (Article 11 (3) and (4)).

What we don’t like

- While we welcome Article 11, on inclusive and pluralistic societies, we note that the last paragraph – on the potential of digital solutions – gives no consideration to the inclusion of marginalised groups (women, people with disabilities, people living in rural areas, etc.) or to the need to develop human-centred digital solutions. This text should have dealt more explicitly with the risks of digital divides, especially where marginalised people are concerned.

Article 12 – Good governance

What we like

- Reference to **participatory** governance, and the commitment to transparency and accountability.

What we don’t like

- We believe it is crucial to strengthen the role civil society actors play in accountability mechanisms: they can support governments in this commitment, and accountability mechanisms, once introduced, can provide citizens with accessible, equitable ways to hold governments to account.

Article 15 – Personal data

What we like

- The recognition of the importance of maintaining “strong data protection regimes and ensuring their enforcement”.

What we don’t like

- We believe that the links between personal data and the risks associated with digitalisation should have been clearly stated in the text. The rise of digitalisation comes with conflicting opportunities and risks. Digital transformation is no longer optional, however: it is key to ensuring that we all benefit in equal measure from new technology. This is more relevant than

ever, as the COVID-19 crisis has not only accelerated digital transformation but has also brought to light the stark inequalities between people and countries when it comes to access and inclusiveness. If used well, digitalisation has the power to create a fairer, more sustainable world for everyone, but if left unchecked it could exacerbate inequality and threaten universal human rights and fundamental freedoms. For access to news, to medical support, to education and to online government services, the internet has become a necessity. Those who remain in the analogue world risk being left behind.¹ EU-ACP development cooperation should raise awareness of how to protect fundamental rights in the digital era.

Title II: Peace and Security

What we like

- New topics of concern have been added since the previous Cotonou Agreement, such as cybersecurity, organised crime (work against corruption in both the private and public sectors), and dealing with the illicit trade in drugs.

What we don't like

- There seems to be no progress on integrating a development perspective into the discourse on peace and security or focusing on human security and community resilience, apart from the general reminders in the introductory paragraph. Moreover, the text merely lists the particular threats to peace and security and recalls the general commitments – it does not commit to new actions.
- This section lacks an integrated approach to conflict and crisis and fails to link humanitarian, development, peace and security efforts sufficiently in the different stages of the conflict cycle. Building societal and community resilience to both health and economic shocks should be at the heart of this section, given its importance in tackling the roots of marginalisation at all levels. In addition, human security and the economic, social and political factors that shape conflict dynamics must be addressed comprehensively in order to achieve “inclusive development”. Furthermore, conflict sensitivity and conflict prevention – and gender-sensitive conflict analysis – are not sufficiently emphasised, and nor are the needs and initiatives of local populations and civil society organisations representing women, youth or other marginalised people.
- In terms of budget allocations, there may be a risk of an imbalance between mediation, conflict prevention and conflict management, as evidence shows that funds are most often used for conflict management-related activities. How can a shift from crisis management to conflict prevention be ensured?
- Another missing element is a focus on civil society organisations and a real commitment to enabling them to intervene. Their multiple roles and contributions must be recognised, and, therefore, so must the necessity to involve them at all levels of political and policy dialogue and all stages of a peace process (indicating clearly how they can intervene). As emphasised above, civil society organisations (and faith-based organisations), especially those representing women, youth and other minorities, are key contributors to crisis prevention, crisis management and conflict resolution and to the implementation of the Women, Peace and Security (WPS) and Youth, Peace and Security (YPS) Agendas.
- The section fails to recognise the negative impact that climate change and environmental degradation have on peace and security (although climate change and security are discussed in particular parts of Title V, e.g. in Article 54 (4) and Article (59)). Furthermore, it is important

¹ For more, see <https://concordeurope.org/resource/digitalisation-ndici-note/>.

to raise the issues of environmental migration and displacement, which are mostly internal and take place close to bordering countries, and also to recall how these phenomena could potentially increase forced migration, exacerbate tensions and trigger new conflicts. In this context, safe corridors are needed, and the Agreement should support this kind of mobility. Including broader environmental concerns in conflict analysis would have meant taking a holistic approach to tackling the root causes of insecurity, preventing violence and resolving conflict, and it is a pity this opportunity was missed.

Article 16

What we like

- The explicit acknowledgement of human security and resilience as essential conditions for sustainable development, the inter-relationship between the peace, security and development agendas, and the prerequisite of an “inclusive development” component for ensuring long-lasting peace and stability.

What we don't like

- What is missing is an explicit recognition of democracy, the rule of law, full respect for human rights and gender equality as key factors in sustainable development and, in parallel, as vital for lasting peace and security.

Article 17 – Conflicts and crises

What we like

- The integrated approach to conflicts and crises, including prevention, mediation, resolution and reconciliation efforts. The inclusion of transitional justice and reconciliation processes (as a means to restore the rule of law and give victims access to justice) helps to facilitate the political transition to societal stability and to strengthen community-based solutions. The reference to the human security aspect, even if it is assessed in more general terms (para. 1).
- The importance of dialogue and consultation as a means of resolving conflict, involving local communities and civil society organisations (para. 3).
- The commitment to ensuring the allocation of financial resources in compliance with the principles and objectives of the Agreement (para. 4).
- The integration of a development perspective in post-conflict situations, by strengthening the link between the short-term goals of humanitarian action and the lasting ones of sustainable development (para. 5).
- In line with the cross-cutting themes, the recognition of the importance of ensuring the participation of women and young people and of focusing on gender-based violence in conflicts (para. 6).

What we don't like

- In Article 17 (1), an important aspect is missing: an integrated approach to conflict needs to be based first and foremost on a sound analysis of the root causes of conflicts and crises, and of fragility; and for this to happen, instruments for joint analysis need to be improved. This is a precondition for the other tasks listed here (such as prevention, mediation, resolution and reconciliation). Another missing aspect: there is no reference to conflict transformation – a process that goes beyond “resolution” (which refers to procedures and process, rather than to structural change). Conflict transformation is an important precondition for long-term peace and reconciliation, as it entails both process-related actions and changes to underlying structures (such as unjust political and social conditions, human rights violations in the shape of legal or political discrimination, corrupt institutions, unfair economic distribution, etc.).

- The wording in Article 17 (3) – the statement that the parties “recognise the importance” of civil society organisations’ involvement in conflict resolution – is not, in our view, strong enough to bind the parties to ensuring that civil society organisations are fully engaged. Given the crucial role they play in facilitating transitional justice and truth and reparation processes, for instance, and in ensuring the effective representation of women and youth in line with the United Nations WPS and YPS Agendas – then, for sustainable peace and security and “inclusive development” to be achieved, civil society organisations must be involved at every stage of the conflict resolution process.
- There is also a lack of clarity concerning the use of financial resources to prevent diversion and to guarantee compliance with the principles and objectives of the Agreement. The wording is vague: even recalling the objectives enunciated in paras 2 and 3 (i.e., the achievement of the SDGs and respect for human rights, democratic principles, good governance and gender equality) would have strengthened this commitment in the context of supporting peace and security activities.
- To ensure the proper implementation of the United Nations WPS Agenda it is, furthermore, essential to enable civil society organisations representing women and other marginalised groups to engage in all the stages of a peace process: without this, the commitment to ensuring the participation of women and girls is meaningless. Moreover, in a conflict or crisis it is also important to integrate a gender-transformative analysis explicitly, in order to understand the prospects for peace and stability.
- Regarding budget allocations under the NDICI, there may be a risk that resources allocated to development could be misplaced and/or used for financing security activities. To prevent the securitisation of development policies, a clear distinction between security and development is needed. Development aid must be channelled to those who need it most, and should not be linked to governments’ readiness to join with one another in controlling borders and managing migration.

Article 18 – Non-proliferation of weapons of mass destruction; Article 19 – Serious crimes of concern to the international community; Article 20 – Terrorism and violent extremism; Article 21 – Organised crime; Article 22 – Maritime security; Article 23 – Small arms and light weapons and other conventional weapons; Article 24 – Illicit drugs; Article 25 – Cybersecurity and cybercrime; Article 26 – Law enforcement cooperation

What we like

- On organised crime (Article 21), the promotion of people’s security (although the meaning of “citizen security” is not clear) with a focus on strengthening institutions and the rule of law, protecting human rights and promoting reform in the justice and security sectors.
- On cybersecurity and cybercrime (Article 25), the explicit reference to the Budapest Convention on Cybercrime and the African Union Convention on Cyber Security and Personal Data Protection.
- The explicit statement in Article 21 that the “root causes” of organised crime need to be tackled and “alternatives” created.

What we don’t like

- Apart from a brief reference in Article 21 (4) to “mediation and other community-based prevention and reconciliation solutions” in relation to organised crime, little effort is made to include a development perspective in tackling each of the threats to security and peace identified.
- These provisions do not add anything new and/or do not sufficiently strengthen the nexus with the sustainable development goals. This suggests that the parties are reluctant to go

deeper into sensitive issues such as terrorism, violent extremism, organised crime or the regulation of conventional weapons, preferring instead to focus on other themes.

- In Article 20 the parties, reiterating their “condemnation of” terrorism, state that they will cooperate in the “fight” to “prevent” and “combat” it, and that they will “tackle” factors contributing to violent extremism and terrorism such as xenophobia, intolerance, racism and religious intolerance. This means that radicalisation and violent extremism are seen as a consequence of negative attitudes. That is a very narrow perception: here it is necessary to cooperate also on analysing root causes and tackling the underlying socio-economic structures that help produce a situation where people (in particular, young people who lack economic prospects and a sense of self-worth) can easily be recruited by violent groups.
- Article 21 (4), on the fight against organised crime, refers to joint endeavours to reform security. Here it is important to make sure that any cooperation designed to strengthen police organisations and armed forces must guarantee that these bodies act in accordance with the rule of law and are under the control of democratic, civilian institutions. Cooperation in the area of the so-called “CBSD” (Capacity Building in Support of Security and Development) needs to establish strong safeguards to ensure that the material and knowhow transferred will not be misused, and that those who are trained are not involved in human rights violations or the oppression of any individuals or groups. Furthermore, for any cooperation in the “security sector”, a clear political desire and support for “reform” is a must – otherwise, instead of improving the situation, this cooperation will prop up autocratic or violent forms of governance.
- Article 21 (1) affirms the need to address the “root causes” of organised crime and states that “alternatives” are needed. What this means, however, is unclear, and an explicit reference – and commitment – to offering alternative business and development models should be included here.
- An important issue is missing from Article 23 (Small arms and light weapons and other conventional weapons): all cooperation in this field needs to be based on the EU Joint Statement on Arms Exports (Council Common Position 2008/944/CFSP, which sets out clear criteria for how to stop the proliferation of weapons in crisis areas.
- Article 26 (2), on Law enforcement cooperation, refers to the “security” of borders and an “integrated border management approach”. What is missing here is a clear reference to the chapter on migration in this Agreement (Article 63 (1)), where another commitment to cooperation is made (cooperation to enable migration, including labour migration), together with a firm statement that any “border management” needs to be based on human rights and the need for free movement within the parameters of international law and mobility that are also required by cross-border trade activities (as outlined for instance by the Economic Community of West African States).

Title III: Human and Social Development

What we like

- We welcome the fact that one of the strategic priorities of the Agreement stresses the importance of promoting human and social development, providing equal opportunities for all and challenging inequality.
- We welcome the inclusion in the Foundation of the Agreement to commit to protecting and promoting sexual and reproductive health and rights, in the context of a full implementation of the recommendations emerging from the International Conference on Population and

Development and the Beijing Platform for Action, including the outcomes of their review conferences.

- We welcome the commitment to decent work for all in line with the ILO Agenda and Standards. We highlight in particular the relevance of the ILO Violence and Harassment Convention, 2019 (No. 190) to ensuring safe, secure environments for all workers, in particular women.
- We welcome the commitment to supporting the participation of children, youth and women in political decision making.
- We appreciate the focus in Article 36 on the economic empowerment of women and girls and the structural changes needed to achieve this, such as access to land ownership and control, and the creation and consolidation of transformative legal frameworks.
- We also welcome the fact that the regional protocols include commitments to upholding fully the regional frameworks designed to promote women's and girls' rights, such as the African Union's Maputo Protocol and its Action Plan.
- We welcome Article 28 on education, which covers all levels, from early childhood to technical, vocational and tertiary education, with due regard for girls' and women's access, and also the recognition of the importance of education in enabling everyone to participate fully in all aspects of public life.
- We welcome Article 30 on food security and improved nutrition, where we appreciate in particular:
 - The recognition that food security and improved nutrition constitute a major global challenge in the work against poverty and growing inequality, which means that the Agreement must therefore address the structural causes of poverty and inequality, including conflict, crises, natural resource degradation and climate change.
 - That the parties are to promote resilient livelihoods and secure access to land, water and other resources, and will also promote inclusive, sustainable growth in agricultural production and productivity, and efficient value chains.
 - That the parties are to promote actions to facilitate adaptation to climate change and variability throughout the food production and food value chains.
 - That diversified food production is being stressed.
 - The very welcome reference to the role of social protection in building resilience.
- We welcome the commitment to working to ensure access to adequate, safe and affordable housing for all.

What we don't like

- We believe that the section on inequality and social cohesion is not comprehensive enough. Although there is a recognition of the need to develop and implement "policies and systems of social protection and security in order to eradicate poverty, fight inequalities and enhance social cohesion" (Article 35), intersectionality and multidimensionality – core issues, in our view – are not mentioned. Moreover, we also believe the Agreement fails to recognise root causes of inequality such as our broken economic model. For instance, the economy is not addressed as one of the main causes of inequality, nor it is held responsible for the links between deepening inequality and issues such as climate change.
- While the Foundation does include a commitment to promoting sexual and reproductive health rights (SRHRs), the same commitment is not included in the regional protocols, where

SRHRs are not mentioned explicitly. Furthermore, the Foundation contains no commitments in important areas that are crucial to achieving SRHRs, such as comprehensive sexuality education.

- It is concerning that the parties will use these frameworks only “as appropriate”. The promotion of women’s and girls’ rights is essential to achieving sustainable development and gender equality, and no one should be left behind in this effort: the Agreement should not provide loopholes that could allow women’s and girls’ rights to be restricted.
- Article 36 (1) could have mentioned other forms of self-empowerment besides economic empowerment.
- A holistic approach to self-empowerment and its enabling conditions is lacking.
- Articles 32 and 33 on inequality do not properly address the myriad forms of inequality.
- We find it highly problematic that there is **no reference to smallholder farmers**, who are mostly women, despite the fact that it is they who produce most of the food consumed in Africa, are those most exposed to climate change and land grabbing, play a crucial role in protecting natural resources and are instrumental in transitioning to agro-ecology. The particular challenges faced by women farmers are not mentioned. The commitment to ensuring secure access to land does not specify who is to have this access. Last but not least, there is no explicit reference to the need to support agro-ecological transition.

Title IV: Inclusive, Sustainable Economic Growth and Development

What we like

- We like that the inclusive element of this title is reflected in its commitment to supporting the socio-economic empowerment and inclusion of marginalised groups, women and youth, with specific references to these groups in several articles, such as those on financial inclusion and access to financial services for women and young entrepreneurs.
- We welcome the references to decent jobs for all, to respect for labour and social rights, and to the promotion of corporate social responsibility and responsible business conduct, which is consistent with the decent work article under the human and social development title.
- On the private sector, we welcome the particular focus given to micro-, small- and medium-sized enterprises (MSMEs), including start-ups, in particular through the promotion of enabling legal, administrative and institutional frameworks with a view to the successful integration of MSMEs into sustainable supply and value chains.
- We also welcome the attention paid to the informal sector, to upgrading informal economic activities to formal ones, and to supporting the development of entrepreneurship among women and youth in the context of empowering them economically and promoting inclusive development. The question remains, how will this be operationalised?
- We welcome the importance attached to collaboration in the field of research and development – especially in sectors that are key to addressing societal challenges, such as health, the environment and climate change – and also in the promotion of indigenous, traditional and local knowledge as a tool for bridging gaps. Likewise, we appreciate the reference to appropriate and effective protection for intellectual property rights while also bearing in mind the crucial need to promote “indigenous, traditional and local knowledge as a tool for bridging knowledge and technology gaps in relevant sectors”.
- Also welcome is the intention to cooperate on developing transparent, predictable frameworks and strategies for the use of public-private partnerships (PPPs), including

strengthening the institutional capacity to negotiate, implement and monitor projects under a PPP arrangement.

- We are pleased to see that the sections on trade recognise the need for cooperation, and that the parties commit to working together on trade policies and the development of trade measures. CONCORD considers it an improvement that the final wording here is less focused on trade than in earlier drafts.
- CONCORD appreciates the EU's insistence that references in existing Economic Partnership Agreements (EPAs) to essential elements of the Cotonou Agreement should be carried over into the post-Cotonou Agreement, with the result that these elements will remain valid in EPAs even when the Cotonou Agreement no longer applies.
- CONCORD appreciates the fact that the post-Cotonou Agreement does not compel the Organisation of African, Caribbean and Pacific States to negotiate EPAs with the EU.

What we don't like

- The text focuses on an outdated concept of economic growth which often runs counter to people-centred progress and increased well-being. It has missed a key opportunity to call into question how the economy currently functions: it is impossible to take a transformative approach if you fail to recognise the weaknesses of the current system. For example, the text could have highlighted the role the economy can play in creating and deepening inequality.
- While inclusiveness is addressed to a certain extent, mainly in relation to women and youth, Title IV contains no mention at all of economic or social inequality.
- On investment (Articles 41 and 42), the commitments relate mainly to attracting investment through a conducive environment and financing tools (such as guarantees), to “[facilitating] investment through legislation, regulations and policies” and to “[protecting] investments”, including through “effective dispute prevention and resolution mechanisms”, while “the importance of concluding international investment agreements” is reaffirmed. This is in stark contrast to the fact that, when it comes to regulating investment or to the responsibilities of investors, the text relies only on promoting common reporting standards and socially responsible investment through existing voluntary frameworks. For example, the annex setting out the role of the European Investment Bank points to an investor-state dispute settlement system that conflicts with a people-centred model of development.
- The chapter on economic transformation is vague, with few concrete commitments. Still, the text does affirm that states must “promote full and productive employment and decent work for all through enhanced competitiveness, diversification, digitalisation, innovation, access to finance, value addition in the manufacturing and services sectors, and linkages among sectors and industries”; also, that they must “pay particular attention to local micro, small and medium enterprises and the formalisation of informal economic activities”. We wonder how far the priority sectors identified for cooperation will really contribute to a transition from commodity dependence to diversified economies, as most of those listed are the traditional ones: “agriculture and agribusiness, livestock and leather, the blue economy, fisheries, mining and extractive industries, cultural and creative industries, sustainable tourism, sustainable energy, information and communication technologies and transport”. Services are also mentioned as a driver of economic transformation and industrialisation.
- Article 45 on private-sector development commits the parties to paying special attention to MSMEs and the informal sector, but apart from “encouraging the integration of sustainability-related objectives in business models”, no reference is made to the role of sustainable, inclusive businesses such as social economy enterprises or cooperatives. Yet these types of

business can significantly help the parties to take a people-centred approach, tackle inequality and promote inclusive and sustainable development, and they need tailored support.

- Article 46 on science, technology and innovation fails to mention the importance of an inclusive, human-centred approach when designing and diffusing new technology and addressing the potential impact of technology on society.
- The chapter on digitalisation is welcome, although it focuses almost exclusively on economic aspects, paying scant attention to societal or human rights aspects or to the protection of privacy. The digital divide and inequality are not mentioned here. In order for the digital economy to be inclusive, and with a view to closing the digital gender gap, this chapter should be read together with the provisions on gender equality and youth in the context of digital skills.
- Although agriculture and agribusiness are one of the priority sectors for cooperation in Title IV, very few commitments are given in that area and the wording used is not strong. The most concrete undertaking is that the parties will cooperate “to support mechanisms and frameworks to increase sustainable and quality agricultural production”. There is no mention of food systems or food security in Title IV (see Title III on food security).
- While CONCORD welcomes the fact that the post-Cotonou Agreement does not compel OACPS members to negotiate EPAs with the EU, the Agreement does remind those that have already concluded EPAs to fulfil their commitments, including those contained in the rendez-vous clauses. In seeking to negotiate new EPAs, or to deepen and broaden existing ones, we recommend that the EU should take fully into account the levels of development, the gaps and needs of the OACPS members concerned. The EU should also consider fully the impact of EPAs on ACP countries and sub-regions, and on their regional economic integration priorities and efforts, and should avoid anything that would undermine or complicate these ACP objectives. For example, CONCORD regrets that the post-Cotonou Agreement pays little attention to the persistent dependence of many ACP countries on commodities and raw materials.
- In addition, we stress the need to ensure that prices for raw materials and commodities reflect the real social and environmental costs of production.

Title V: Environmental Sustainability and Climate Change

What we like

- Overall, the section is a good starting point for seriously engaging parties in respecting the most important treaties and conventions on climate change, the biodiversity of natural ecosystems (although the Convention on Biological Diversity is not explicitly mentioned), and ocean governance. Resilience is emphasised across all the specific priorities. Although the health-related aspects is missing, the text often attempts to discuss environmental sustainability and climate change more holistically by considering their interlinkages with sustainable growth, employment and investment opportunities, food security, social equity and cultural well-being for current and future generations, displacement and migration, and peace and security.

What we don't like

- The crucial role of civil society is not explicitly recognised in the part about environmental sustainability and climate change. For example, civil society organisations are mentioned only once (Article 54 (2)). Although we are glad to see civil society organisations being included

more generally, under the umbrella term of “stakeholders”, in relation to the conservation, protection and governance of oceans and seas (Article 56 (1)), we believe this is insufficient.

- While gender equality is declared in the General Provisions to be a cross-cutting theme, in this part it is completely absent. The particular impacts of climate change and environmental degradation on women and girls (in all their diversity), and the role the latter play in leading communities towards more sustainable practices, need to be acknowledged. Further efforts are needed to mainstream a gender-transformative response to and a gender analysis of climate- and environmental-related policies.
- The provisions acknowledge that ACP countries suffer the most from the effects of environmental degradation and climate adversity, but there are no further suggestions to help them deal with these challenges. A key issue to focus on here is financing for climate change adaptation. To achieve a green and just transition it is necessary to provide and facilitate investment designed to develop ACP countries' climate plans (NDCs, NAPs, etc.) by tackling climate change, favouring job creation and strengthening health and food security systems. Moreover, it is vital to ensure that climate finance takes gender issues, such as a women's access to credit, into account. This is crucial if investment is to help achieve and advance long-term economic and sustainable development goals more comprehensively. The lack of a specific focus on climate adaptation or climate financing in these provisions still reflects an imbalance of interests between the parties, and the recurrence of what is predominantly the EU's viewpoint.
- In this context, inclusive stakeholder participation in the drafting and implementation of countries' climate plans must be guaranteed, with particular emphasis on the inclusion of women's and indigenous people's rights organisations.
- More focus is needed on social, gender and human rights impacts and risks in the broad areas of environmental sustainability and climate change. In prioritising ecosystem resilience, holistic, inclusive, transformative climate and environmental solutions are needed. This cannot be done without considering the rights, needs and aspirations of local groups and communities, in particular women and girls, youth and indigenous people.
- There is no mention of the value of local or indigenous knowledge, which is crucial for developing solutions and programmes designed to boost sustainable food production, community resilience, environmental protection (in particular, land management and degradation) and adaptation to climate change.

Article 54

What we like

- Overall, the section is comprehensive, as it includes a commitment to ensuring the conservation and integrated management of natural resources such as biological diversity, to reducing the negative effects of climate change, and to setting paths for achieving sustainable economies and resilient low-carbon progress with a view to creating “decent jobs for all” (para. 1). There is a commitment to mainstreaming environmental sustainability or climate change agendas into all policies, plans and investments (para. 2). Including civil society as a partner with which to engage in constructive dialogue is also a positive element, as is building and strengthening the resilience of at-risk populations (para. 3).
- We welcome the attention paid to the countries most severely affected by climate adversity, to the need to mitigate the loss and damage caused by climate change, and to the link made between climate change strategies and disaster risk reduction, resilience and food security.
- We appreciate the importance attached to the nexus linking environmental degradation and climate change to displacement and migration and the need to ensure safe corridors and

capacity for reception, reducing tensions with host communities. It would be equally important to look at the significant effects of climate change on peace and security (para. 4 (vi) and (vii)).

What we don't like

- The article lacks an explicit mention of local communities' right to access and control natural resources such as land and water, with a special focus on women and their role both in fighting environmental crime and wildlife trafficking and in tackling pollution. To be fair, a more encouraging acknowledgement in this context can be found under the priority "Human and social development", relating to the environment, resource management and climate change, where the involvement of local communities and indigenous peoples is mentioned (Article 44 (5)).

Chapter 1 – Environmental sustainability

Article 55 – Environment and natural resources

What we like

- The attention paid to areas of high biodiversity value and the protection of natural ecosystems, and the promotion of ecosystem-based approaches and nature-based solutions in efforts to achieve environmental objectives. The importance attached to protecting ecosystems and biodiversity when addressing climate change (paras 1-3).
- That the key concept of resilience is linked to sustainable land management and to achieving a land degradation-neutral environment. The commitment to reducing biodiversity loss, creating employment opportunities and increasing the provision of ecosystem services and functions, including by stepping up drought risk preparedness and resilience (paras 4-5).
- The fact that, when it comes to the tenure of land, fisheries and forests, the parties are to promote sustainable governance.
- That the parties will promote fair and equitable access to genetic resources, and benefit sharing in their use (para. 6).

What we don't like

- The article fails to mention transparency or accountability, or community involvement (by women and girls, youth or indigenous people) in the management and protection of natural resources.
- Despite the recognition of an integrated management approach, we feel that the integrated management of natural resources is a concept not clearly promoted by the document. We feel this was a missed opportunity.

Chapter 2 – Oceans, seas and marine resources

Article 56 – Ocean governance

What we like

- The recognition of the human pressure and impact on oceans and seas, the reaffirmation of the ocean as a common good, the guiding principle of shared responsibility upheld by all states and requiring concerted action with all stakeholders, the explicit mention of the United Nations Convention on the Law of the Sea (para. 1). The importance of preserving the resilience of marine ecosystems in the interests of climate change mitigation and adaptation (para. 2). The promotion of the conservation and sustainable management of marine resources (para. 3), of the sustainable development of the blue economy in the interests of

food security and nutrition, improving livelihoods, creating job opportunities and ensuring social equity and cultural well-being for current and future generations (para. 4).

What we don't like

- We welcome this section for its attempt to acknowledge the threats to seas and oceans, but the wording is vague and is not based on binding/hard law. Moreover, it is not clear what is meant by “sustainable management of marine resources” – in particular, “sustainable fisheries management” – or how the parties intend to pursue this objective.
- Regarding the conservation, protection and governance of seas and oceans, the phrase “concerted action with all the stakeholders” (para. 1) is vague and may not be strong enough to guarantee civil society involvement.
- There is a need to integrate a strong social perspective and solid human rights commitments into the governance of seas and oceans, and to include the role of women and girls, youth and indigenous people specifically. These elements are missing here.

Chapter 3 – Climate change

Article 57 – Climate commitments; Article 58 – Climate action; Article 59 – Climate change and security

What we like

- Overall, the emphasis on recalling the commitments made in the United Nations Framework Convention on Climate Change and in the Paris Agreement to enhancing the ability to adapt, to reducing the climate burden and to strengthening resilience makes all investment and financial flows consistent with the Paris Agreement (Article 57).
- The specific acknowledgement of the disproportionate impact climate change has on historically marginalised countries, including Small Island Developing States, Low-lying Coastal States, Least Developed Countries and Landlocked Developing Countries; of the common but differentiated responsibilities and respective capabilities of countries; and of the integration of National Adaptation Plans (NAPs) into national strategies to achieve “climate-resilient sustainable development” (Article 58).
- The recognition of the nexus between security threats and climate change and environmental degradation, especially for the countries most exposed to climate change (Article 59).

What we don't like

- Investment and financial resources, which are crucial for supporting adaptation measures and sustaining economies moving towards a green transition, are mentioned only briefly. A specific focus on adaptation should be prioritised, as well as community-led nature-based solutions for climate: they help to increase resilience, facilitate adaptation and improve the livelihoods of communities that are marginalised, while shaping a long-term vision of how to ensure human and social development.
- The impact of climate change on peace and security is also mentioned only briefly (the word “peace” no longer appears in Article 59). This nexus is absent from the section on peace and security priorities (Part II, Title II).
- There is a need to integrate a strong social perspective and solid human rights commitments into climate action, and to include the role of women and girls, youth and indigenous people specifically. These elements are missing here.

Chapter 3 – Natural disasters

Article 60 – Disaster risk reduction and management; Article 61 – Disaster response and recovery

What we like

- The enhancement of disaster resilience by looking at both short- and long-term impacts and increasing the synergies between disaster risk reduction and climate change adaptation strategies. Strengthening grassroots-level communication, and effectively integrating disaster risk reduction into development strategies. The systematic and comprehensive integration of risk assessment, risk management and resilience, ensuring that individuals and communities can adapt better to shocks and recover quickly from them. Ensuring inclusive, equitable outcomes in order to build the resilience of the most marginalised communities (Article 60).
- The importance of coordinated needs assessments, enhanced disaster preparedness and a capacity for local, early and effective responses to meet the needs of crisis-affected people. The inclusion of a long-term development perspective by enhancing coordination between humanitarian and development stakeholders right from the onset of a crisis in order to build, properly, the resilience of affected populations (humanitarian and development nexus) (Article 61).
- The importance of a coherent approach to disaster risk reduction (DRR), and looking at stronger connections between it and climate change adaptation (CCA) (Article 60). It is also good to see a multi-hazard approach to risk reduction and risk management.

What we don't like

- There is a need to integrate a strong social perspective and solid human rights commitments into disaster risk reduction and management, and to include the roles of women and girls, youth and indigenous people specifically. These elements are missing here.
- The all-of-society/multi-stakeholder approach to DRR should be emphasised: in some forms it is there in Article 61 (on disaster response and recovery), but it should be an integral part of Article 60 (in developing DRR plans and strategies, as it is essential to engage with all stakeholders, at both the national and local levels). This should include a commitment to delegating to local authorities the responsibility and budgets not only for responding to disasters, but also for planning resilience and DRR measures.
- There should be a reference to the Sendai Framework and the targets member states committed to when signing it. In particular, a reference to Target E (developing national and local DRR strategies by 2020) should be included.
- There should be a stronger emphasis on the role of local actors in Disaster Risk Reduction/Management (DRR-M). As COVID-19 has shown, local actors are the first responders to a crisis, and have knowledge and experience (including on prevention, resilience and mitigation measures) that need to feed into decision-making processes at all stages of the DRR cycle. Local actors can be allies in implementing disaster management policies and plans, but should also be involved in designing them.²

Title VI: Migration and Mobility

What we like

- We welcome the parties' stated intention to:
 - "develop legal pathways for migration, including labour migration and other mobility schemes";

² A paper by the United Nations Office for Disaster Risk Reduction on the role of local actors could be used to strengthen this point, see: <https://www.undrr.org/publication/undrr-asia-pacific-covid-19-brief-combating-dual-challenges-climate-related-disasters>.

- improve and implement “transparent and effective requirements for admission and residence [...] with a view to [facilitating] circular migration and mobility”;
- “cooperate to improve [the] transparency and comparability of all qualifications, with the aim of facilitating their recognition for access to further learning as well as their acceptance in the labour market”;
- develop measures against racism and xenophobia;
- reduce the cost of remittances to less than 3%.
- It is by upholding these commitments, prioritising actions that will help the parties achieve these goals, that the EU can foster a truly coherent, balanced approach to migration and mobility, based on the principle of solidarity.

What we don't like

- CONCORD disapproves of the final Agreement's overall approach to migration, which fails to reflect the parties' commitment to a comprehensive, coherent and balanced approach to migration, based on the principles of solidarity and partnership (as established in Title VI, Article 62).
 - The final Agreement's provisions in Title VI are not guided by an understanding of migration as a natural part of life, as a right, or as a contributor to sustainable development (even though one of the stated objectives of the Agreement is to reap the benefits of migration). The text gives insufficient consideration to the positive aspects of migration, to the positive ways in which migrants and diasporas can contribute to countries of destination, and to possible joint actions that could be taken by the parties to harness the positive aspects of migration during the implementation phase of the Agreement.
 - The final Agreement's provisions on migration rather overwhelmingly focus on securitisation and short-term measures designed primarily to strengthen cooperation on reducing migrant arrivals in Europe. This is noticeable in the length and level of detail in the articles on legal migration and mobility, on the one hand, and in the articles on irregular migration and on return and readmission on the other. While the paragraphs on legal migration remain vague, those on return and readmission (Title VI, Chapter 1, Article 74) are highly detailed and concrete, include specific timeframes for action and are supported by an annex on return and readmission, included at the end of the Agreement. Considering the multiple pressing needs regarding migration (which include, for example, the protection of the human rights of migrants, enhanced support for refugees and asylum seekers in destination countries, etc.), it is questionable why and how “return and readmission” was considered to require a detailed and prescriptive annex while other important objectives did not receive the same attention. This political choice is indicative of the EU's priorities when it comes to migration, and CONCORD regrets that they are not aligned with a human rights-based approach or with policy coherence for sustainable development.
 - As such, the final Agreement's migration component reflects neither ACP interests nor the EU's existing commitments to promoting legal migration (as set out in the Global Approach to Migration and Mobility, regional dialogues, the European Agenda on Migration, the Valletta Plan, the EU Emergency Trust Fund for Africa and the Global Compact for Migration). This confirms the existing trend whereby, when it comes to migration, the EU is stepping away from European core values and adopting priorities that are at odds with its own stated goal of building a “true partnership of equals” with partner countries.

- Overall, we consider this to be a missed opportunity to build what Europe needs – that is, a rights-based, human-centric, long-term approach to migration, focused on harnessing its positive aspects.
- Furthermore, the Agreement is missing a gender equality dimension. Overall, little has been done to include a gender perspective in migration, asylum or integration policies. This aspect is almost neglected; in the EU’s New Pact on Migration and Asylum, for instance, gender is mentioned only in the context of trafficking. Yet experiences of migration and mobility are not gender-neutral: female migrants and refugees face a higher risk of exclusion and exposure to harm. It is important, therefore, to include a gender-sensitive analysis and to consider gender-responsive migration governance when addressing mobility.³

Chapter 1 – Legal migration and mobility

Article 63 – Legal migration and mobility

What we like

- CONCORD welcomes the parties’ commitments to basing their partnership on migration on the principles of solidarity and partnership, and to developing legal pathways for migration. In comparison to the previous Agreement, the new one makes some progress in this regard by specifying several areas relating to regular migration that the parties should invest in (e.g. circular migration and the comparability of all qualifications).

What we don’t like

- The new Agreement’s component on legal migration employs extremely vague language and shows little commitment to concrete action, e.g.: “The Parties shall pursue an open dialogue on procedures guiding legal migration”, or “The Parties shall further pursue an open exchange on visa issues and on facilitating mobility”.

Article 64 – Integration and non-discrimination

What we don’t like

- The final Agreement makes no reference to the human rights of *irregular* migrants. Strong language – both on ensuring the protection of the human rights, dignity and fundamental freedoms of all migrants, including those in irregular situations residing in their territories, and on protecting those migrants from discrimination and all forms of exploitation and abuse – was included in previous draft versions of the Agreement. CONCORD regrets that this reference to the human rights of irregular migrants was not kept in the final Agreement.

Chapter 2 – Migration and development

Article 65 – Migration and development

What we don’t like

- The Agreement’s reference to the migration-development nexus is weak. While it acknowledges that “well managed migration can be a source of prosperity, innovation and sustainable development” (Title VI, Chapter 1, Article 65), it does so only with regard to the contributions that migration can make to development processes in countries of origin; it makes no reference to contributions to destination countries, and contains no objectives on harnessing the positive synergies between migration and development.

Article 66 – Diaspora and development

³ See: Migration | European Institute for Gender Equality (europa.eu) and more generally, in the context of EU-Africa relations: Africa-Europe relations beyond 2020: Looking through a gender lens – ECDPM Discussion Paper 285.

What we don't like

- While the Agreement acknowledges the “meaningful role” of diasporas and the contributions their members can make, it does so only in relation to their countries of origin, making no reference to their contributions to destination countries and without including any objectives on supporting and promoting the role of diasporas (Title VI, Chapter 1, Article 66).

Article 68 – South-South migration

What we don't like

- The Agreement's reference to South-South migration is confined to acknowledging its relevance. To reaffirm the value of South-South migration, however, the new Agreement should have included a commitment from the parties to policy coherence – that is, not to cooperate on stemming irregular migration or on integrated border management, which could undermine existing regional mobility frameworks (an issue relevant in sub-Saharan Africa in particular).

Article 69 – Natural disasters, climate change and environmental degradation

What we don't like

- The nexus between migration (including displacement) and natural disasters, climate change and environmental degradation is recognised, but the wording is too vague. Considering that there is no further development on this issue in the section on the environment (Title V, Article 54), this is a missed opportunity. Furthermore, there is no mention of a general human rights framework applying in this context, such as the International Covenant on Economic, Social and Cultural Rights or the International Covenant on Civil and Political Rights, nor of the Paris Agreement or other soft or hard law frameworks such as the Global Compact on Migration, the United Nations Guiding Principles on International Displacement, the Kampala Convention (for African countries), the Cancun Adaptation Framework or the Nansen Initiative.

Article 70 – Root causes of irregular migration

What we don't like

- We regret that the new Agreement presents a narrow interpretation of the root causes of irregular migration and forced displacement. Despite considerable political buy-in for the “root causes” approach, numerous questions about its underlying logic and its consequences remain. In CONCORD's view, such questions should not be underestimated, and an evidence-based approach to migration is needed. For example, the “root causes” approach focuses on short-term solutions, projects and targeted interventions (e.g. livelihood support for returnees), even though what is most needed is a holistic, sustainable, long-term approach aimed at addressing the structural conditions that undermine sustainable development and safe migration. Furthermore, the decision to focus on irregular migration and forced displacement overlooks the fact that the reasons why people move are not binary or clear-cut.

Chapter 4 – Return, readmission and reintegration

Article 74 – Return and readmission

What we don't like

- Although the new Agreement establishes that the parties should “explore ways to cooperate in order to promote voluntary return”, it does not include a commitment to ensuring that assisted voluntary return is the preferred option, even though that would have been in line with the EU's Return Directive (which stipulates that a “period for voluntary departure” should normally be granted).

Article 75 – Reintegration

What we don't like

- Although the new Agreement establishes that the parties should “explore ways to cooperate in order to [...] facilitate [the] sustainable reintegration of returned persons including, where relevant, through sustainable reintegration programmes”, it does not include a commitment from the parties to provide such reintegration support. This is at odds with the EU's commitment made under the Valletta Action Plan to improve cooperation on sustainable reintegration so as to protect the human rights and dignity of returnees. Considering the negative effects that the non-reintegration of returnees can have in the local communities and countries of origin (such as social tension and unemployment), we regret that stronger language, outlining particular forms of reintegration support to be provided for returnees, is not included in the new Agreement.

Part III: Global Alliances and International Cooperation

What we like

- The drive to strengthen multilateralism through work on cross-cutting issues such as “peace, democracy, human rights, the rule of law, gender equality, sustainable development, preservation of the environment and the work against climate change”.
- In Article 80 (3) and (4), the clear recognition of the need to uphold international human rights norms and mechanisms and to cooperate to advance the attainment of the SDGs.

What we don't like

- Article 78 urges the parties to “take the necessary steps to the ratification, implementation and domestication of relevant international treaties and conventions”. The use of the word “relevant” leaves room for discretionary action, which defeats the purpose of this article. Instead, it would have been preferable to demand that parties should take the steps necessary for the ratification, implementation and domestication of all international environmental and human rights treaties and conventions.
- An explicit mention of the resourcing needed to strengthen the multilateral system referred to in Article 78 is missing.

Part IV: Means of Cooperation and Implementation

What we like

- The commitment to mobilise both financial and non-financial resources in order to achieve the objectives of the Agreement.
- That implementation will be in line with the “leave no one behind” principle and that the parties are committed to the development effectiveness principles.
- While the focus of development cooperation should be on the countries most in need (LDCs, LICs, fragile countries, small islands, landlocked countries, etc.), due attention should also be paid to the particular challenges facing middle-income countries, especially in relation to inequality, social exclusion and their access to resources.

- Article 82 (9) on programming is quite good. There is a mention of democratic ownership, and no “where appropriate” limitation on the involvement of civil society in the programming process (it will be interesting to compare wording with the NDICI regulation).
- Article 83 (2) highlights the importance of improving the “fairness, transparency, efficiency and effectiveness” of tax systems and recognises the need to integrate the informal sector which, as we know, is composed mostly of historically marginalised individuals such as women and girls, people of colour and those of lower economic and/or social status.
- Article 83 (3) recognises the need to combat illicit financial flows (IFFs) as a way to release resources that are crucial for the delivery of the Agreement. The two parties will step up their efforts to combat IFFs with a view to eradicating them, to put in place anti-corruption, anti-fraud and anti-money laundering measures and to “undertake measures to tackle tax avoidance, tax evasion and other harmful tax practices”. They also commit to scaling up international tax cooperation in a fair, inclusive and transparent manner. It is particularly important to have a human rights lens for combating IFFs, as a way to ensure that social protection systems are strengthened and are effective in reaching those furthest behind.
- Article 84 on private resources provides that, where appropriate, the parties will strengthen regulatory frameworks and instruments to align private-sector incentives better with public goals.
- On remittances, they are to put in place legislation and regulatory frameworks to create a competitive and transparent market for cheaper, faster and safer transfers of money through legal and official channels.

What we don't like

- Article 82 (3) provides that cooperation must also mean contributing resources to regional, interregional and intercontinental initiatives aimed at strengthening cooperation between the parties – which calls for an all-OACPS budget. No such budget is provided for in the NDICI instrument.
- Article 82 (7) on budget support highlights interesting principles and criteria (ownership, mutual accountability, a shared commitment to universal values, improved governance) but omits important ones such as “democratic ownership” with a monitoring role for civil society, transparent public finance management, and scrutiny by parliaments and independent bodies such as courts of auditors or anti-corruption bodies.
- In addition to what is already specified in Article 82 (2), more clarity is needed on what will be prioritised, given limited resources, together with guidance on how these priorities will be set.
- Article 85 commits the parties to making debt sustainable in the long term, but the actions proposed do not seem commensurate with the task. Although we appreciate the Agreement's stipulation that the parties must contribute, as appropriate, to internationally approved debt-relief initiatives, in order to alleviate the debt-servicing burden of ACP states, we believe the states parties should do more by leading the way in pushing for such initiatives.

Part V: Institutional Framework

What we don't like

- We welcome Article 95 (paras 1, 2 and 3) as a way to highlight the need to engage with stakeholders. However, this article does not mention accountability mechanisms or effective

dialogue with stakeholders. It should also reference the importance of equitable representation for stakeholders from different sectors of society (civil society, the private sector, etc.) and at different levels (from local to global). The term “as appropriate” (in para. 4) is also worrying.

Part VI: Final Provisions

- We note that the decision by EU members states on who the EU party/parties will be (whether EU only, or EU and its member states) will have serious consequences for the implementation of the final provisions (in particular the ratification process, denunciation and dispute settlement).

Article 99: Duration and Revision

What we like

- We welcome the possibility of ongoing revision for both the Agreement and the three regional protocols on the basis of a decision by the relevant joint councils.

Article 101: Dispute settlement and fulfilment of obligations

What we like

- Paragraphs 4 and 5, which link dispute settlement, non-fulfilment and possible retaliation with a violation of the essential elements of the Agreement, are best aligned with the idea of a partnership agreement based on common principles.
- Paragraph 6 also provides for the establishment of a special committee, composed of an equal number of representatives from both sides, to provide advice.

What we don't like

- The most problematic part of Article 101 is the third paragraph, which opens the door to retaliation measures on the basis of any obligation included in the Agreement. Read, for example, in conjunction with Article 74, on readmission and return, it is particularly worrying.
- Equally problematic is Article 101 (3), which opens up the possibility for the EU to denounce non-compliance by an ACP state on any grounds.

Thematic highlights

Gender:

Gender equality is an objective of the Agreement and is included in the principles set out in the Foundation (General Provisions). In addition, it is considered to be a cross-cutting theme, and the parties commit to promoting gender mainstreaming. Specific areas of action are further elaborated in the articles on gender equality under the human rights and human development titles of the Foundation, which are reflected in regional protocols.

While the Foundation does not mention the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), in the Africa Protocol the parties commit to its full implementation. We welcome the specific mentions of female genital mutilation and of child, early and forced marriage in the Foundation and the Africa Protocol. We also welcome the commitment in the Foundation to implement fully the recommendations of the International Conference on Population and Development and the Beijing Platform for Action, and the outcomes of their review conferences, and to promote sexual and reproductive health rights in that context. The mention of the need to promote universal access to comprehensive sexual and reproductive health information

and education, included in the regional protocols, is also important. We regret, however, that the Agreement does not specifically condemn discrimination on the basis of sexual orientation or gender identity.

That said, the section on cross-cutting themes does not mention the obligation to resource and deliver on cross-cutting goals such as gender equality. While we welcome specific commitments on gender equality, the Agreement does not meaningfully mainstream a gender perspective throughout the priority areas – and this could affect either its ability to deliver on gender mainstreaming or its quality/impact. In addition, the Agreement leaves room for a binary interpretation of the term “gender” which could limit members’ ability to stay true to the SDGs and the overall commitment to “leaving no one behind”.

Civil society:

The Agreement’s Foundation promotes a multi-stakeholder approach and acknowledges civil society’s important role and contribution. The parties commit to promoting and strengthening civil society participation in policy processes through information sharing, consultations and involvement in dialogues and implementation, as well as capacity-building. In addition, they commit to protecting and ensuring freedom of expression and opinion and freedom of assembly, and to enabling civic space.

However, the Agreement fails to create concrete mechanisms for civil society participation. It specifies that representatives of civil society will be informed and consulted and will contribute to dialogues surrounding the Agreement “where appropriate”. This limitation is found in the articles on partnership dialogue and actors (Articles 3 (4) and 5 (3)), the latter also clarifying that civil society will be involved “in the areas that concern them based on the extent to which they address the needs of the population and on their specific competencies, and have accountable and transparent governance structures”. The role of civil society in monitoring and evaluation is not mentioned explicitly. This, for us, is a significant and worrying gap. Civil society is key to ensuring the adequate implementation of international instruments, and the Agreement should have explicitly recognised its role and laid out specific details/procedures for civil society involvement/engagement to ensure that governments and institutions uphold their human rights commitments.

Youth:

We are glad that young people are considered a cross-cutting element in the Agreement and that their rights, empowerment and needs, together with those of children, are further elaborated in specific articles in the Foundation and the regional protocols. We welcome in particular the several references to their right to participate in decision making.

Protocols

Comparison between the Regional Protocols and the EU-OACPS Agreement, in terms of agriculture:

- The Pacific Regional Protocol contains the most protective wording for local food systems, local production and small-scale farmers. It also puts a strong emphasis on the need to support climate-resilient agriculture and agro-ecology. These provisions are exemplary and should be a source of inspiration for other governments negotiating agreements with the EU.
- The Caribbean Regional Protocol stresses the need for greater value capture for local actors, the need for diversification, and the need to reduce dependence on food imports and to support local food production. There is particular emphasis on concrete areas of action involving women and young people. However, instead of agro-ecology, the model promoted is climate-smart agriculture, and there is no mention of the need to regulate investment in agriculture in order to ensure it respects human rights and the environment.

- The Africa Regional Protocol makes a vague, passing reference to women and young people in agriculture. There is a commitment to incentivising private investment, but none to regulating investment in agriculture to ensure it respects human rights and the environment. The model promoted is export-oriented, and there are no references at all to the need to boost local food production or local markets, while agro-ecology is not even mentioned. Nor is there any mention of farmer-led, local- or indigenous-led research, or nutritious local crops. Overall, this protocol looks like a model from the past, and it represents a missed opportunity for African governments to negotiate provisions that would have benefited their rural populations.

Africa Regional Protocol

Title I – Inclusive, sustainable economic growth and development

Article 17 – Agriculture

What we like

- The first paragraph refers to the sustainable management of natural resources, the need to take into account all aspects of sustainability, and the elimination of harmful incentives – all welcome moves. The commitment to building the capacity of family farming organisations and MSMEs is welcome, although this is to be done through “empowerment policies for women and young people” – which is very vague. It is great to see willingness to build capacity in the context of fair-trade schemes.
- The commitment to facilitating access to agricultural land and inheritance rights, “including” for family farmers, young people and women, is welcome. However, the word “including” opens the door to facilitating access to agricultural land for other actors, such as domestic and foreign companies and investors – something that has proven to be problematic, as it translates to the massive (and growing) phenomenon of land grabbing.

What we don't like

- The parties commit to incentivising investment in agriculture – which is certainly needed. The focus, however, is mostly on private investment (para. 3), while introducing “investor-friendly rules and regulations” is too vague as it may include tax breaks and facilitated access to land – and everyone knows there is no idle land in Africa. In addition, there is no commitment to regulating investors, obliging them to carry out due diligence or holding them to account for human rights abuses or environmental degradation. The intention to foster private investment in research means that all funding will continue to be for research on conventional agriculture and a few staple crops, with none going to agro-ecology.
- The first three paragraphs contain no reference to the fact that the support should benefit, first and foremost, small-scale women farmers and local communities.
- The fourth paragraph promotes the export-oriented model of agriculture and includes no reference to territorial or local markets, which is where most food is traded in Africa, in particular by smallholder farmers. In fact, the references to smallholders and women look like an afterthought: an add-on to an agenda that is essentially about conventional agriculture and foreign investment. In that context, it is not surprising that the provision includes no reference to agro-ecology.

Title II – Human and Social Development



Article 34 – Food security and improved nutrition

What we like

- The commitment to improving access to finance for small producers and to strengthening social safety nets.

What we don't like

- No focus on smallholder farmers, women or local food systems. The provision is badly drafted, unclear, and all-encompassing. No strong environmental or climate dimension either. No clarity as to whether the food made available locally will be produced locally or imported, and no reference to farmer-led research.

TITLE III – Environment, Natural Resources Management and Climate Change

Article 43

What we like

- Overall, there is explicit mention of the relevant binding treaties and commitments in these spheres, and a stated intention to build up the parties' capacity to implement them. These agreements include the Convention on Biological Diversity and Protocols (Article 44), Sustainable Fisheries Partnership Agreements (Article 46), the International Maritime Organization (Article 46), REDD+ (Article 48), and the International Consortium to Combat Wildlife Crime (Article 49).
- In general, (a slight) improvement in acknowledging civil society as a party to engage with constructively and the endeavour to build alliances in international settings.
- The commitment to mainstreaming environmental sustainability, climate change objectives and the pursuit of environmentally sustainable growth in national and local policies, plans and investment.
- The references to indigenous peoples, to the United Nations Declaration on the Rights of Indigenous Peoples, and to local communities.

What we don't like

- The roles of women and youth in tackling climate change and related actions in different domains are not mentioned anywhere.
- The aspects identified as missing from the General Provisions have not been integrated.

Chapter 1 – Environmental sustainability and natural resources management

Article 44 – Biodiversity and ecosystem

What we like

- Supporting innovative options, such as nature-based solutions and agro-ecology (para. 2).
- An inclusive approach to addressing key drivers of habitat loss such as land use change, the expansion of subsistence agriculture and the development of commercial agriculture, urban areas and energy infrastructure (para. 3).
- Strengthening the involvement of local communities and indigenous peoples, as set out in the United Nations Declaration on the Rights of Indigenous Peoples, in the conservation of ecosystems, including through the promotion of environment-friendly, sustainable tourism and the creation of jobs and other economic opportunities (para. 5).

Article 46 – Ocean governance

What we like

- The recognition of the special, differential treatment for developing and least-developed African countries in the World Trade Organization negotiations on fisheries subsidies (para. 4).
- Supporting the regulation of greenhouse gas emissions reductions from ships, and actively supporting the urgent implementation of the initial International Maritime Organization strategy to reduce greenhouse gas emissions from ships (para. 5).
- Adopting initiatives to combat illegal, unreported and unregulated (IUU) fishing and promoting and implementing agreed monitoring, control and surveillance measures designed to conserve fish stocks and prevent overfishing, in accordance with international law.
- Applying the precautionary principle and the ecosystem approach, promoting research and sharing best practices (in areas of mutual interest relating to seabed mineral resources), in order to ensure the sound environmental management of activities to protect and preserve the maritime environment and its biodiversity (para. 8).

What we do not like

- We do not like the use of the term “where appropriate” to limit the obligation to implement traceability systems and measures designed to exclude the products of IUU fishing from trade flows.
- We regret that, as a comprehensive development approach to ocean governance has not been taken, this section fails to emphasise the need to reduce poverty, improve livelihoods, support resilience, limit climate change related-risks and strengthen food systems. We feel that there is a distinct risk of prioritising short-term gains in the blue economy with consequent negative impacts on marine ecosystems and artisanal fishing communities in coastal areas.
- Furthermore, the provision uses vague and/or soft-law language when dealing with the fisheries sector: this does not help with reinforcing measures designed to tackle the lack of transparency in fishing agreements, corporate abuse, corruption or human smuggling.
- Lastly, the chapter fails to recognise the importance of integrating local knowledge and supporting coastal communities, which suffer most from overexploitation, the effects of climate change and illegal fishing.

Article 47 – Land management and land degradation

What we like

- The commitment to implementing mitigation and rehabilitation measures based on best practices and best scientific knowledge, and also on local knowledge and experience, in areas affected by land degradation (para. 3).

Article 48 – Forests

What we like

- The commitment to strengthening the involvement of local authorities and communities in forest protection (para. 5).

Article 50 – Water and freshwater management

What we like

- Strengthening dialogue and encouraging partnerships between public authorities, the private sector and civil society (para. 3).

- Mainstreaming climate change mitigation and adaptation in freshwater fisheries and aquaculture (para. 4).

Chapter 2 – Climate change and natural disasters

Article 51 – Climate action

What we like

- Phasing out inefficient fossil-fuel subsidies in a manner that protects the poor and the affected communities (para. 3).
- The recognition of climate change and environmental degradation as a threat to peace and security, particularly in situations of fragility and in countries most at risk. The commitment to strengthening adaptation and resilience measures in order to ensure conflict prevention through early-warning systems, and to strengthening the link between early warning and early action across policy areas, including through risk and impact assessments (para. 5).
- The recognition that, in relation to the loss and damage associated with the adverse effects of climate change, actions need to be taken to align finance flows with a pathway towards low greenhouse gas emissions and climate-resilient development (para. 7).
- That synergies between the public administration, civil society organisations and private business are to be promoted, together with the fostering of private-sector participation in efforts to achieve a climate-resilient economy with low greenhouse gas emissions, including through joint research (para. 9).

Article 52 – Drought and desertification

What we like

- Accelerating progress towards the implementation of the National Action Plans and Land Degradation Neutrality targets set out in the United Nations Convention to Combat Desertification and other relevant international and regional initiatives, including the Great Green Wall initiative (para. 1).
- Preparing for and responding to emergencies caused by drought, and working to increase resilience to environmental degradation, desertification and related health threats and humanitarian crises, by addressing factors that cause exposure to risk (para. 2).

Article 53 – Resilience to natural disasters

What we like

- Cooperating to build the resilience of people, societies and infrastructures to natural disasters, taking into account the impact of climate change (para. 1).
- Strengthening capacity for regional disaster and emergency response, including civil protection mechanisms, together with the capacity of local communities and institutions, focusing on the most marginalised and at-risk households and groups (para. 4).

TITLE IV – PEACE AND SECURITY

What we like

Article 54



- This provision declares that the parties “shall cooperate on ensuring sustainable financing for all peace and security activities”. More clarification is needed, however, with regard to the meaning of “sustainable financing”.

Article 55 – Regional and multilateral cooperation

- Promoting local ownership, inclusiveness, resilience and the sustainability of all actions, engaging with national and local authorities, communities and civil society (para. 3).

Article 56 – Conflicts and crises

- The reference to the Women, Peace and Security (WPS) and the Youth, Peace and Security (YPS) Agendas and to the role of youth and women in peace and security (para. 5).

Article 57 – Terrorism, violent extremism and radicalisation

- A good but idealistic ambition to commit the parties to responding to the challenges posed by the links between terrorism and transnational organised crime, in full compliance with the rule of law and international law, including human rights law, refugee law and international humanitarian law (para. 1).
- Engaging with civil society to prevent, and increase resilience to, acts of terrorism, violent extremism and radicalisation (para. 2).

Article 58 – Organised crime

- Taking into account gender specificity when addressing trafficking in human beings, as women and girls are disproportionately targeted (para. 2).

Article 61 – Illicit drugs

- Fostering dialogue with relevant stakeholders, including civil society (para. 2).

Caribbean Regional Protocol

Title I – Inclusive, Sustainable Economic Growth and Development

Article 16 – Agriculture

What we like

The provision is quite similar to Article 17 of the Africa Protocol, but with tweaks that are definitely very important improvements. In particular:

- Emphasis on the need for greater value capture by local actors.
- Commitment to diversifying agricultural production.
- Commitment to promoting organics (in addition to fair-trade schemes, which are also mentioned in the Africa Protocol).
- Commitment to ensuring equal land and inheritance rights for women and improving their access to markets, finance and agricultural services. This is more definitive than the provision in the Africa Protocol, referring explicitly to women rather than merely “including” them.
- Extremely welcome commitment to providing specific support for young people, with concrete areas of action.

What we don't like



- As with the Africa Protocol, we regret that the commitment to instituting investment-supportive rules and regulations lacks any commitment to regulating investors in the context of human rights or environmental protection. To protect local communities and indigenous peoples, an express reference to free, prior and informed consent would have been important. It is unfortunate that the commitment to strengthening research relates only to climate-smart agriculture – an agri-food industry-led concept that entails practices harmful for biodiversity and the climate.

Title III – Human Rights, Governance, Peace and Security

Article 46 – Food security and improved nutrition

What we like

- We like everything in this provision. The negative impact of food imports on food security and nutrition is mentioned, and the emphasis is on the development of sustainable agriculture and food production. Special attention is paid to the most at-risk populations and countries.

Pacific Regional Protocol

Title II – Inclusive and Sustainable Economic Development

Article 22 – “Blue Economy”

What we like

- We welcome the commitment to promoting a blue economy by considering the importance of linking together employment creation, improving livelihoods, social equity, and food security systems. Moreover, we appreciate the fact that the parties’ commit to respecting the needs of local communities when developing sustainable aquaculture, and we welcome the inclusion of artisanal fisheries.

What we don’t like

- The aforementioned aspects are missing in the Africa Regional Protocol.

Article 23 – Agriculture

What we like

- Again, we like everything in this provision. We welcome the parties’ commitment to supporting agro-ecological practices and climate-resilient agriculture with a view to improving livelihoods, income and decent work. The commitment to improving market access for smallholders is also welcome, as is the focus on local value addition and biodiverse value-chains. The commitment to fighting pests is very important, and it is a pity that it doesn’t also appear in the Africa Protocol, given the massive challenges faced by farmers in several countries.

TITLE III Oceans, seas and fisheries

What we like

This chapter is more comprehensive and detailed than the comparable one in the Africa Regional Protocol, in particular on the following issues:

- The emphasis on the social, economic and environmental aspects of sustainable development when addressing the governance of oceans, and on the importance of traditional and indigenous knowledge when establishing protected marine areas and sanctuaries (Article 30).
- The commitment to promoting access to fisheries resources by local communities and small-scale and artisanal fishers, and promoting food security and inter-generational and intra-generational equity (Article 32).
- The binding wording on taking enforcement actions and sanctions against IUU fishing activities, and the commitment to prohibiting forms of fisheries subsidies that contribute to overcapacity and overfishing (Articles 33 and 34).

What we don't like

- Neither the Pacific nor the Africa Regional Protocol firmly condemns ocean-floor mining or oil spills, which contribute to the pollution and degradation of the seabed and threaten marine life.

Title V – Human and Social Development

Article 46 – Food security and improved nutrition

What we like

- Once again, we like everything in this provision. In particular, the commitment to promoting local, diversified food production, and to promoting healthy food produced and consumed locally while reducing reliance on imported food with low nutritional value. The commitment to addressing the underlying causes of food and nutrition insecurity. The emphasis on diversification, and on nutritional crop varieties.



Disclaimer: The project 'Towards an open, fair and sustainable Europe in the world – EU Presidency Project 2020-2022' is funded by the European Union and implemented by the Association of German Development and Humanitarian Aid NGOs (VENRO), the Portuguese Non-Governmental Development Organizations Platform (Plataforma Portuguesa das ONGD), the Slovenian NGO Platform for Development, Global Education and Financiamento: Humanitarian Aid (SLOGA), and the European NGO confederation for relief and development (CONCORD).